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Improvements in the Criminal Laws of California

Whether or not the near future will bring a sweeping reformation in our penal system depends upon the courage, and not upon the intellect of the people of this State. It is not a question of education. Ninety per cent of those who read this article will agree with the statements concerning the inhumanity and lack of logic of our present system, as a matter of course, and perhaps skip such observations, as a waste of time in reading. They will pass along to see what suggestions are made in the way of remedy.

The campaign which by the time this article is published, will have been inaugurated by the Southern California Institute of Criminal Law and Criminology is to be one not of education, but whose purpose is to bring home to the mind of the public the wastefulness, the inhumanity and the futility of many present methods.

The normal man wants to do what is just. To secure right action from him, it is only necessary to induce him to consider. In stating these axioms, I refer not to the criminal, but to you, the reader of this article; you who vote and pay taxes, who constitute the State of California.

The stable state is composed of normal citizens. The individual may be both a criminal and a sinner; the state can be a sinner only. It is one, and this more from habit than from wrong intention. Sin brings its own suffering. Governments cannot escape this universal law. The government that mistreats its own citizens, that sins economically or socially will reap the reward in economic and social suffering.

As to the nature of criminality itself there is a wide diverg-

ence of opinion among investigators and criminologists. One school maintains that the brain of every criminal is diseased or abnormal; another denies this, and claims that the average criminal's brain is entirely normal, although perhaps defective, and that it is not diseased in any regard.

Much of the discussion on the part of these theorists appears to the practical mind mere quibbling, and yet it is perhaps harmless. When through the process of the reasoning of either school we have reached the conclusion that nearly all persons who commit anti-social acts are possessed of either abnormal or unusual, diseased or defective brains the same important deductions must follow: first, that these persons are subject to improvement, if not complete cure, by scientific treatment. Second, that in applying such treatment each one convicted of crime must be regarded and dealt with as an individual. Beside these, under either theory, the man or woman who has committed, and is likely to again commit, an anti-social act, must be restrained from further conduct of the same character.

If we regard criminality as a disease, how much time would you waste trying to convince some one that the proper way to cure a person of a fever is to have a physician prescribe so much medicine to be administered for so many days by a janitor, and let it go at that.

In criminal cases the judges are the doctors. We prescribe a dose of four years in prison for one, and life sentence for another, as a cure for his disease of criminality. That is the end of it as far as the doctor is concerned, and the nurse is a guard with a club and an arsenal. Whose time is worth so little that he can afford to spend it reading an argument against the folly of such a system?

Again, if we are to accept the view of those who declare that criminality is the product of a defective, though not of a diseased brain, present methods of dealing with the criminal are just as clearly futile, for there is no pretense made at so engaging the minds of those convicted of crime that the defective parts will be used and developed, or the unusually prominent parts reduced through disuse to the ordinary.

And so if the purpose be to benefit society and the criminal, the bickerings of the various schools about whether criminality indicates disease or a defective brain, and whether or not persons having either should be classed as incorrigibles, intractables, ad-

olescents or just plain criminals appears to be a quarrel about tweedle dee and tweedle dum.

We Americans are generally accused of formulating our policies upon business rather than conscientious principles. The present system of dealing with persons convicted of crime would not be tolerated by any business man conducting his affairs on lines of economy.

The farmer used to plant any kind of pumpkin seed, any variety of corn or wheat, just so it was pumpkin, corn or wheat seed. Farmers are now agriculturists. They do things scientifically and they get two or threefold as much in harvest time as formerly.

The orchardists prune, irrigate and fertilize, not in a hit-or-miss fashion, but in the right season and in proper amounts, considering the individual grove and the individual tree. These things are done not for amusement, but because they pay, financially.

How much longer will we waste millions of dollars yearly in unscientific methods in the treatment of criminals. The Elmira system is not perfect, but it is a long step in the right direction. It has been demonstrated that this method of dealing with persons convicted of crime saves the State of New York annually over \$300,000. California can do the same. Do not the taxpayers of this State feel that this would be worth while? Of course, the initial cost is considerable. San Quentin and Folsom have long been too crowded for decency or morality.

We will soon find it necessary to add another institution to those that we already have. The need is even now imperative. It will cost no more to make it one designed and equipped for the reformation and education of criminals to useful purposes, than to build it of dungeons, like the prison of Chillon, and have it a training school of crime and depravity.

Criminality can be corrected. Nearly every one knows this truth. To the man who doubts its correctness I will say, you have been too much occupied with business or pleasure to learn that at the New York State Penitentiary at Elmira, for twenty-five years under the direction of that remarkable man, Z. R. Brockway, and in at least four institutions of the same character in other States for a less time, demonstration has been made, so conclusively that no one qualified to speak on the subject now makes denial of the truth of the following propositions:

The mind of the criminal is diseased, undeveloped or defective, and whether diseased, undeveloped or defective the difficulty can in most cases be corrected. There have been some failures in the treatment of the first two classes, but not a larger percentage than in the treatment of any serious disease cared for by any school of physicians or healers. The first offender usually is not by thought and habit of confirmed criminality.

Place such a person among confirmed criminals and he will become one also, but by proper exercise of the body and mind under skillful and experienced supervision, the criminal tendency may be prevented from ever becoming habitual and an integral part of his character, but may be wholly eradicated from his brain, and he may soon be restored to an ordinary law-abiding citizen. What other result do we demand?

To be sure, we have a system of paroles and credits for good behavior. In other words, if the treatment accorded to all prisoners in our penitentiaries happens to fit the case of the individual, he is cured and probably shows it in his good behavior, and is paroled or entitled to an early discharge.

It is related that during the late war in South Africa a regiment of the Boer army was forced to retreat to a town in which there were no drugs, and no physician, and was there besieged. The commander found that he had about fifty sick men on his hands. From somewhere he procured a quantity of laudanum. Some of the sick had fever, some dysentery, and some various other ailments. He then directed that eight drops of this medicine be administered to each patient every hour as long as it lasted. Twelve of the men promptly recovered and the rest promptly died.

We are working on exactly this principle in our State prisons to-day. Such discretion and judgment is shown as the limited variety of work will permit in the way of putting men at such work as they are physically capable of doing but no pretense is made of occupying the prisoner at labor, and in times of leisure so as to cure him of mental abnormality. Yet we of the State of California have asserted, and heard others so often say, that our purpose of imprisoning offenders against the law is to reform them, that we probably believe it to be true. A man or a government may be a hypocrite through bigotry like the pharisee, as well as by deliberate design.

Indeed, as our penitentiaries are now constituted, scientific

treatment, calculated to accomplish the reformation of the individual prisoner is impossible. I offer no criticism of the wardens or boards of directors of our prisons. It is the citizenship of the State with whom the responsibility rests.

The prison managements, like the commander in the Boer army, use such means as they have at hand for the treatment of the sick or defective men and women in their custody, regarding them as a body. Criminals have always been treated as a class, just as though the ailment of each was the same as that of every other criminal. True, there is a dividing line between the inherent character of nearly all persons who commit crime, on the one hand, and that of honest men on the other. But the Bertillon system proves that no two criminals' fingers leave the same imprint, and the Elmira system has just as clearly demonstrated that no two criminals' brains are deficient in the same respect.

Our present system is semi-barbaric. I do not make this statement as an exaggeration to attract attention to a minor evil. To say that the present system is semi-barbaric is as true, as calm and as matter-of-fact an assertion as the daily announcement of the weather man in the summer time that in California the weather conditions for the next few days will be fair.

What we need, then, is a place where persons convicted of crime can be scientifically treated, and where there can be a diversity of work, of study and of amusement. At the present time we judges cause the record concerning a convict sent to the penitentiary to show his previous occupation, so that if possible he may be put at such work in prison as he may be fitted to do, but competent authorities tell us that frequently the labor at which the criminal has worked is the occupation of all others least likely to aid him. It may, in fact, have had much to do with his mental growth along unnatural lines.

The foregoing is intended to briefly point out the fact that persons convicted of crime should be treated, not as a class, but as individuals.

A full comprehension of this fact marks the dividing of the ways between the old and new methods.

Those in charge of the scientific treatment of prisoners should not have to contend with the counter influences of the association of those under treatment with other criminals of a more pronounced type than themselves. Those who have had experience say that this is one of the most important items to be ob-

served in the successful treatment of the undeveloped, defective or diseased criminal mind.

Therefore, let us act in this matter; let those interested in this economic problem take steps to see that the initial move is made in this reform by the establishment of a separate penal institution for the first offenders.

Let us begin with those who may be most easily and inexpensively reclaimed or prevented from developing into dangerous and incurable criminals.

A penitentiary for first offenders would pay for itself at least in ten years. This is not a guess, the experience of other States proves the assertion. Nor is this a charitable movement. It is one of financial saving to the people of the State. I am in sympathy with the sentiment recently expressed by some one that it is about time honest people needing assistance were given encouragement. There is proportionately too little done for the deserving, honest poor in the way of gratuitous help. But if we will economize in the matter of our present unscientific, extravagant disregard of logic and all rational theories in the treatment of prisoners, we would have more money to spend on charity for the honest, deserving poor.

Another change closely connected with the system of treating prisoners as herein outlined, is the adoption of some form of the indeterminate sentence.

I would not advocate an amendment to the law in this regard applying to those guilty of crimes of great atrocity. But as to the others, the sentence of imprisonment should be continuous until the convict is cured. In imposing sentence the court might name a minimum duration of imprisonment. But if "prevention is the principle and imprisonment the incident" to the confinement of criminals, they should not be deprived of their liberty after being reformed as men and women, capable of doing their part as law-abiding, useful members of society; on the other hand, why should we liberate them before such restoration has been effected.

Let no one be deceived into believing that these reforms would render the life of a criminal easy or soften the actual penalties of crime. The methods employed at Elmira have been criticised by some as being too severe. Yet this is obviously an unfair criticism. In every case it is for the prisoner and no one else to decide whether or not he will aid himself. If he wants to be

cured he must take his medicine. And, according to the records, almost without exception each convict is willing and glad to follow the course prescribed. Stimulated by fear of indefinite incarceration and spurred on by a hope of early freedom, prisoners follow the routine of work and study, mental and physical exercise and rest, and moral discipline, laid down by experts who treat them as individuals. These methods have transformed hundreds of defective human beings into well-balanced, normal, law-abiding men and women, who have gone out from this reformatory and are now adding to the wealth of the State by their industry.

These are matters which should be marked out in the future. It will take considerable time to bring them about. The public must demand strong, remedial penal laws before even the initial legislation will be enacted. After that it will require many years to establish the reforms here suggested, or others which experience and wisdom may dictate in their place.

And right here let me say, that the foregoing, insofar as detail is concerned, is not a finality, even in the mind of the writer. It is intended as a suggestion of ideas and ideals to be amended and modified as experience and counsel may indicate advisable.

But there are reforms in our present treatment of criminals that may be accomplished immediately. Every able bodied man in our penal institutions should work. He should work industriously for at least nine hours every day. Public policy demands that the well being of those injured by the acts of criminals or by their imprisonment be adequately provided for. Such persons are the families of the criminal and the victims of his crime.

It is a most difficult subject on which to secure statistics, but from the data I have been able to obtain, I am satisfied that a large proportion of the wives and children of those men who are convicted of crime and who leave their families destitute (as nearly all do) become members of the anti-social class of society, and many such dependents become actual criminals.

They are the wives and children of the convict, and whether or not the public holds them as disgraced and ostracized from society, in addition to the demands of poverty, their own mental attitude is such that they are strongly drawn away from the law-abiding section of the community and into the anti-social element of it. Usually there is a feeling of resentment against the law and those who are responsible for its enactment which has

placed their kin behind prison bars; but beyond this there is present as a sort of self inspired conviction, whether based upon fact or otherwise, the belief that because they are the wives or children of a convict, society has ostracized them. Now, place a person in this mental attitude in financial destitution with the criminal element ready and anxious to receive him, and what is more natural than that he should turn to a life of criminality or immorality.

Again, the wife or child has a legal right to support and protection, from the husband and father. For a parent's failure to provide, he may be sentenced to as much as two years on the county chain gang, during which time the county pays \$1.50 per day to the family for its support. Yet, if he commits some crime other than failure to provide for his family, say, burglary or robbery, to supply his family with necessities, the law now dismisses from consideration the claims of the widow and children, and sentences the criminal to the penitentiary, turning the family adrift. In restraining one person dangerous to society, we frequently make two or three criminals or paupers. Why should we not provide that in all cases where the punishment may be as light as two years in the state prison, and where it appears that the man convicted of crime has a wife or children, who will be left without proper provision, the court may impose a sentence of not more than two years on the county chain gang, the county to pay to the person designated \$1.50 per day for their support? This is perhaps the most urgent reform for immediate results that can be suggested. But in the state prisons the cost of keeping the persons there convicted, is only about 45 cents per day. Surely these prisoners can be occupied with some work by which they can earn, say, \$1.50 in addition to this, to be devoted to their families.

Many offenders are young men who have no one dependent upon them for support. Because of this it does not follow that there is no one who has a moral or legal claim upon the results of their labor. The man who has embezzled the widow's mite, and spent it in dissipation, may be sentenced to say five years in San Quentin. That sentence does not restore to her the hard-earned savings of a lifetime. No. From a practical standpoint the fact that the perpetrator of the wrong is imprisoned provides neither protection nor vindication to the one whose property has been feloniously taken, or whose earning power has been reduced

or destroyed by crimes of violence. The law should require all prisoners, physically able, to work as hard and as long, perhaps harder and longer, than the laborer doing the same work out of prison. It should take from the proceeds of such industry enough to fully compensate the state itself for expense attached to the incarceration of the convict. All over that amount should be devoted to assist those left destitute, who have a legal and moral claim upon the prisoner for support, or to those who have sustained loss by reason of the criminal acts for which he has been incarcerated, as the case may be. If there is no one having such claims, or after the same have been paid, some part of the prisoner's labor should be saved for him, so that when he is liberated, he will not go out penniless.

In many steps in our treatment of those convicted of crime, the attitude and acts of the people operating through the medium of the state government is unfair and fallacious. A child can have no respect for a parent whom it knows to be a hypocrite. Is it surprising that those who have felt the sting of the policy of our present penal system, are often desrespectful and rebellious? What I have reference to is illustrated by a case tried not long ago in the Superior Court of Los Angeles County, where a young man who had become addicted to the drink habit, passed a fictitious check to get money with which to buy more liquor. He was arrested; locked up in the county jail; after several weeks imprisonment, during which he lost in physical strength, because he could not eat the food provided and also no doubt on account of lack of exercise, he pleaded guilty to the charge. Proceedings were suspended and he was given his liberty on three years probation.

The State turned that boy loose, hungry, weak and penniless. It said to him, "We give you every opportunity to make good", and it said to itself, "How merciful and holy am I". Why, such treatment is as cruel as slow torture of the mouse repeatedly liberated by the cat, but each time caught and brought back, until its life is gone.

On probation he went out, and pretty soon discouraged, he accepted some one's offer of a drink; then the craving for more was aroused and he forged another check. The State reached out its paw and pulled him back and hypocritically said, "You have had a fair chance to make good and have failed, your punishment shall be prison stripes."

Who does not know that the same thing is true with respect to every convict liberated after having served a term of years in the penitentiary, unless he has money of his own, or friends or relatives to help him? Without friends or money, and bearing the brand of an ex-convict the State theoretically expects him to profit by his experience, to have learned the lesson that crime does not pay, and thenceforth to live an honest, law-abiding life. This again is hypocrisy. No one *compos mentis* connected with the administration of penal law expects him to do anything but return to a life of crime; the only life at which he knows how to make a living.

Sheriffs, constables, and police officers are frequently criticised for hounding men who have served a term in the penitentiary, and thus forcing them back to lives of crime. I am inclined to think that this charge is more fancied than real,—at any rate they are merely acting upon their knowledge gained from experience that a large percentage of men who serve one term in the penitentiary are thereafter reasonably certain to commit other crimes.

Through the operation of a plan by which prisoners in our penitentiaries and jails may work for those who have a legal and moral claim upon them for support or restitution, opportunity exists for such convicts to assist in some degree these helpless and innocent victims of others' wrongdoing. The injustice of our present system in this regard is one upon which a volume might be written. Through it we drive women and children to desperation by taking away the provider of their necessities, the husband and the father. It is a desperation that doubles the crime committed in the State.

If space would permit, many other changes, some slight and some radical might be suggested to improve the conditions of those imprisoned, their families, their victims, and of society.

When the public realizes that both from an economic and a moral standpoint our present criminal code is unjust and inadequate, reforms along the lines herein indicated, will be demanded and accomplished. In the meantime it is the duty of every person to use his influence and vote to impress upon those responsible for present conditions the necessity of reformatory action.

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